

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 100703 / August 14, 2024

INVESTMENT ADVISERS ACT OF 1940
Release No. 6653 / August 14, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-22000

In the Matter of

**Truist Securities, Inc.; Truist
Investment Services, Inc.; and
Truist Advisory Services, Inc.**

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTIONS 15(b) AND 21C
OF THE SECURITIES EXCHANGE ACT OF
1934 AND SECTIONS 203(e) AND 203(k) OF
THE INVESTMENT ADVISERS ACT OF
1940, MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Truist Securities, Inc. (“TSI”), Truist Investment Services, Inc. (“TIS”), and Truist Advisory Services, Inc. (“TAS”) (collectively, “Respondents” or “Truist”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted an Offer of Settlement (the “Offer”), which the Commission has determined to accept. Respondents admit the facts set forth in Section III below, acknowledge that their conduct violated the federal securities laws, admit the Commission’s jurisdiction over them and the subject matter of these proceedings, and consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 and

Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order.

III.

On the basis of this Order and Respondents' Offer, the Commission finds¹ that:

Summary

1. The federal securities laws impose recordkeeping requirements on broker-dealers and registered investment advisers to ensure that they responsibly discharge their crucial role in our markets. The Commission has long said that compliance with these requirements is essential to investor protection and the Commission's efforts to further its mandate of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation. These proceedings arise out of Truist's identification—and self-report—of widespread and longstanding failures of certain Truist employees, including at senior levels, to adhere to certain of these essential requirements and Truist's own policies. Using their personal devices, these employees communicated both internally and externally by personal text messages or WhatsApp, which were not approved written communications platforms ("off-channel communications").

2. From at least January 2021, TSI and TIS employees sent and received off-channel communications that related to the businesses of these broker-dealers, and TAS employees sent and received off-channel communications related to recommendations made or proposed to be made and advice given or proposed to be given in their advisory business. Respondents did not maintain or preserve the substantial majority of these written communications. Respondents' failures were widespread, and involved employees at various levels of authority. As a result, TSI and TIS violated Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder, and TAS violated Section 204 of the Advisers Act and Rule 204-2(a)(7) thereunder.

3. Truist's supervisors, who were responsible for supervising junior employees, communicated off-channel using their personal devices. In fact, senior management and managing directors across each firm, including those responsible for supervising junior employees, failed to comply with Truist policies by communicating using non-firm approved methods on their personal devices about Truist's broker-dealer and/or investment adviser businesses, as applicable.

4. Truist's widespread failure to implement its policies and procedures that prohibit such communications led to its failure to reasonably supervise its employees within the meaning of Section 15(b)(4)(E) of the Exchange Act as to TSI and TIS and Section 203(e)(6) of the Advisers Act as to TAS.

¹ The findings herein are made pursuant to Respondents' Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

5. During the time period that Truist failed to maintain and preserve off-channel communications its employees sent and received related to the broker-dealer and investment adviser businesses, Truist received and responded to Commission subpoenas for documents and records requests in numerous Commission investigations. As a result, Truist's recordkeeping failures likely impacted the Commission's ability to carry out its regulatory functions and investigate violations of the federal securities laws across these investigations.

6. In 2022, Truist voluntarily began an internal investigation of its off-channel communications practices and subsequently self-reported the facts to Commission staff. Respondents proactively identified key documents and facts, which assisted the Commission staff in efficiently investigating the conduct. Prior to and after contacting the Division of Enforcement, Respondents undertook significant remedial measures relating to their recordkeeping obligations; enhanced surveillance capabilities; and issued firm-owned devices on which only firm-approved platforms are permitted to customer-facing or client-facing staff, as applicable.

7. After self-reporting its conduct, Truist initiated a review of its recordkeeping failures and further enhanced its program of remediation. As set forth in the Undertakings below, Truist will retain a compliance consultant to review and assess Truist's remedial steps relating to its recordkeeping practices, policies and procedures, related supervisory practices, and employment actions.

Respondents

8. Truist Securities, Inc. ("TSI") is a Tennessee corporation with its principal place of business in Atlanta, Georgia and is registered with the Commission as a broker-dealer. It is a wholly-owned subsidiary of Truist Financial Corporation ("TFC"), a financial services firm incorporated in North Carolina and headquartered in Charlotte, North Carolina.

9. Truist Investment Services, Inc. ("TIS") is a Georgia corporation with its principal place of business in Atlanta, Georgia and is registered with the Commission as broker-dealer. It is a wholly-owned subsidiary of TFC.

10. Truist Advisory Services, Inc. ("TAS") is a Delaware corporation with its principal place of business in Atlanta, Georgia and is registered with the Commission as an investment adviser. It is a wholly-owned subsidiary of TFC.

Recordkeeping Requirements under the Exchange Act and the Advisers Act

11. Section 17(a)(1) of the Exchange Act and Section 204 of the Advisers Act authorize the Commission to issue rules requiring, respectively, broker-dealers and investment advisers, to make and keep for prescribed periods, and furnish copies of, such records as necessary or appropriate in the public interest, for the protection of investors, or, with respect to the Exchange Act, otherwise in furtherance of the purposes of the Exchange Act.

12. The Commission adopted Rule 17a-4 under the Exchange Act and Rule 204-2 under the Advisers Act pursuant to this authority. These rules specify the manner and length of time that the records created in accordance with Commission rules, and certain other records produced by broker-dealers or investment advisers, must be maintained and produced promptly to Commission representatives.

13. The rules adopted under Section 17(a)(1) of the Exchange Act, including Rule 17a-4(b)(4), require that broker-dealers preserve in an easily accessible place originals of all communications received and copies of all communications sent relating to the broker-dealer's business as such. These rules impose minimum recordkeeping requirements that are based on standards a prudent broker-dealer should follow in the normal course of business.

14. The Commission previously has stated that these and other recordkeeping requirements "are an integral part of the investor protection function of the Commission, and other securities regulators, in that the preserved records are the primary means of monitoring compliance with applicable securities laws, including antifraud provisions and financial responsibility standards." Commission Guidance to Broker-Dealers on the Use of Electronic Storage Media under the Electronic Signatures in Global and National Commerce Act of 2000 with Respect to Rule 17a-4(f), 17 C.F.R. Part 241, Exchange Act Rel. No. 44238 (May 1, 2001).

15. The rules adopted under Advisers Act Section 204, including Advisers Act Rule 204-2(a)(7), require that investment advisers preserve in an easily accessible place originals of all communications received and copies of all written communications sent relating to, among other things, any recommendation made or proposed to be made and any advice given or proposed to be given.

Truist's Policies and Procedures

16. Truist maintained certain policies and procedures designed to ensure the retention of business-related records, including electronic communications, in compliance with the relevant recordkeeping provisions.

17. Truist employees were advised that the use of unapproved electronic communications methods, including on their personal devices, was not permitted, and they should not use personal email, chats or text messaging applications for business purposes, or forward work-related communications to unapproved software applications on their personal devices.

18. Messages sent through Truist-approved communications methods were monitored, subject to review, and, when appropriate, archived. Messages sent through unapproved communications methods, such as text messages and WhatsApp messages, were not monitored, subject to review, or archived.

19. Truist's policies were designed to address supervisors' supervision of employees' training in Truist's communications policies and adherence to Truist's books and recordkeeping requirements. Supervisory policies notified employees that electronic communications were

subject to surveillance by Truist. Truist had procedures for all employees, including supervisors, requiring annual self-attestations of compliance.

20. Truist, however, failed adequately to implement a system of follow-up and review to determine that all personnel, including supervisors, were reasonably following Truist's policies. While permitting employees to use approved communications methods, including on personal phones, for business communications, Truist failed to implement sufficient monitoring to assure that its recordkeeping and communications policies were being followed.

Truist's Recordkeeping Failures Across Its Brokerage and Investment Advisory Businesses

21. In September 2021, the Commission staff commenced a risk-based initiative to investigate whether broker-dealers were properly retaining business-related messages sent and received on personal devices. In June 2023, Truist voluntarily contacted the staff regarding certain off-channel communications activity that it had identified related to the businesses of TSI and TIS. Truist cooperated with the staff's investigation by proactively gathering communications from the personal devices of its personnel and responding to the staff's requests for additional information. As reported to the Commission staff, Truist personnel who had engaged in the use of off-channel communications included senior leadership and managing directors.

22. Truist alerted the Commission staff to pervasive off-channel communications at various seniority levels of TSI and TIS. TSI and TIS collected data from a sampling of broker-dealer personnel and found that all of the broker-dealer personnel sampled had engaged in at least some level of off-channel communications. Overall, these personnel sent and received numerous off-channel communications, involving other TSI and TIS personnel and TSI and TIS's broker-dealer customers or other participants in the securities industry. As disclosed to the Commission staff, within TSI and TIS, senior leadership and managing directors across each firm participated in off-channel communications.

23. From at least January 1, 2021, TSI and TIS personnel sent and received off-channel messages that concerned the broker-dealer businesses.

24. For example, a member of TSI senior management had off-channel communications with numerous other Truist employees, including employees he supervised, and numerous TSI customers or other participants in the securities industry.

25. Similarly, a TIS senior manager communicated by text message with approximately two dozen other Truist employees, including employees he supervised.

26. In addition, from at least January 1, 2021, TAS personnel sent and received off-channel communications subject to the record-keeping requirements of Advisers Act Rule 204-2.

27. For example, in October 2021, TAS personnel exchanged off-channel communications with a third party by providing them with investment advice.

**Respondents’ Failure to Preserve Required Records
Potentially Compromised and Delayed Commission Investigations**

28. Between January 2021 and July 2023, TSI and TIS received and responded to Commission subpoenas for documents and records requests in numerous Commission investigations. By failing to maintain and preserve required records relating to its broker-dealer and investment adviser businesses, TSI and TIS likely deprived the Commission of these off-channel communications in various investigations.

Respondents’ Violations and Failure to Supervise

29. As a result of the conduct described above, from at least January 2021 through the date of this Order, TSI and TIS willfully² violated Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder, which require broker-dealers to preserve in an easily accessible place originals of all communications received and copies of all communications sent relating to its business as such.

30. As a result of the conduct described above, from at least January 2021 through the date of this Order, TAS willfully violated Section 204 of the Advisers Act and Rule 204-2(a)(7) thereunder, which require investment advisers to preserve in an easily accessible place originals of all written communications received and copies of all written communications sent relating to, among other things, any recommendation made or proposed to be made and any advice given or proposed to be given.

31. As a result of the conduct described above, TSI and TIS failed reasonably to supervise their employees with a view to preventing or detecting certain of their employees’ aiding and abetting violations of Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder, within the meaning of Section 15(b)(4)(E) of the Exchange Act.

32. As a result of the conduct described above, TAS failed reasonably to supervise its employees with a view to preventing or detecting certain of its employees’ aiding and abetting violations of Section 204 of the Advisers Act and Rule 204-2(a)(7) thereunder, within the meaning of Section 203(e)(6) of the Advisers Act.

Truist’s Self-Report, Cooperation, and Remedial Efforts

33. In determining to accept the Offer, the Commission considered Truist’s self-report, cooperation afforded to Commission staff, and remediation. Respondents undertook an internal investigation and self-reported the facts to Commission staff. Prior to approaching Commission staff in June 2023, Truist had begun a program of remediation, which included issuing firm-owned devices to customer-facing or client-facing personnel; strengthening its self-policing procedures, including by making investments in new technologies to improve surveillance efforts and

² “Willfully,” for purposes of imposing relief under Section 15(b) of the Exchange Act and Section 203(e) of the Advisers Act “means no more than that the person charged with the duty knows what he is doing.” *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)).

enhancing internal certifications; and conducting trainings and sending firm-wide reminders that emphasized the importance of complying with recordkeeping obligations. Truist also took proactive steps to onboard and preserve off-channel communications. In determining the penalty amount, the Commission considered Truist's self-report, cooperation, and remediation.

Undertakings

34. Prior to this action, Truist enhanced its policies and procedures, and increased training concerning the use of approved communications methods, including on personal devices. In addition, Respondents have undertaken to:

35. Compliance Consultant:

- a. TSI, TIS, and TAS shall each retain, within thirty (30) days of the entry of this Order, the services of a compliance consultant ("Compliance Consultant") that is not unacceptable to the Commission staff. The Compliance Consultant's compensation and expenses shall be borne exclusively by Truist.
- b. Truist will oversee the work of the Compliance Consultant.
- c. Truist shall provide to the Commission staff, within sixty (60) days of the entry of this Order, a copy of the engagement letter detailing the Compliance Consultant's responsibilities, which shall include a comprehensive compliance review as described below. Truist shall require that, within ninety (90) days of the date of the engagement letter, the Compliance Consultant conduct:
 - i. A comprehensive review of Truist's supervisory, compliance, and other policies and procedures designed to ensure that Truist's electronic communications, including those found on personal electronic devices, including without limitation, cellular phones ("Personal Devices"), are preserved in accordance with the requirements of the federal securities laws.
 - ii. A comprehensive review of training conducted by Truist to ensure personnel are complying with the requirements regarding the preservation of electronic communications, including those found on Personal Devices, in accordance with the requirements of the federal securities laws, including by ensuring that Truist personnel certify in writing on a quarterly basis that they are complying with preservation requirements.
 - iii. An assessment of the surveillance program measures implemented by Truist to ensure compliance, on an ongoing basis, with the requirements found in the federal securities laws to preserve electronic communications, including those found on Personal Devices.
 - iv. An assessment of the technological solutions that Truist has begun implementing to meet the record retention requirements of the federal

securities laws, including an assessment of the likelihood that Truist personnel will use the technological solutions going forward and a review of the measures employed by Truist to track employee usage of new technological solutions.

- v. An assessment of the measures used by Truist to prevent the use of unauthorized communications methods for business communications by employees. This assessment should include, but not be limited to, a review of Truist's policies and procedures to ascertain if they provide for any significant technology and/or behavioral restrictions that help prevent the risk of the use of unapproved communications methods on Personal Devices (e.g., trading floor restrictions).
 - vi. A review of Truist's electronic communications surveillance routines to ensure that electronic communications through approved communications methods found on Personal Devices are incorporated into Truist's overall communications surveillance program.
 - vii. A comprehensive review of the framework adopted by Truist to address instances of non-compliance by Truist employees with Truist's policies and procedures concerning the use of Personal Devices to communicate about Truist business in the past. This review shall include a survey of how Truist determined which employees failed to comply with Truist policies and procedures, the corrective action carried out, an evaluation of who violated policies and why, what penalties were imposed, and whether penalties were handed out consistently across business lines and seniority levels.
- d. Truist shall require that, within forty-five (45) days after completion of the review set forth in sub-paragraphs c.i. through c.vii. above, the Compliance Consultant shall submit a detailed written report of its findings to each of TSI, TIS, and TAS and to the Commission staff (the "Report"). Truist shall require that the Report include a description of the review performed, the names of the individuals who performed the review, the conclusions reached, the Compliance Consultant's recommendations for changes in or improvements to Truist's respective policies and procedures, and a summary of the plan for implementing the recommended changes in or improvements to such policies and procedures.
- e. Truist shall adopt all recommendations contained in the Report within ninety (90) days of the date of each Report; provided, however, that within forty-five (45) days after the date of such Report, Truist shall advise the Compliance Consultant and the Commission staff in writing of any recommendations that Truist considers to be unduly burdensome, impractical, or inappropriate. With respect to any recommendation that Truist considers unduly burdensome, impractical, or inappropriate, Truist need not adopt such recommendation at that time, but shall

propose in writing an alternative policy, procedure, or disclosure designed to achieve the same objective or purpose.

- f. As to any recommendation concerning Truist's policies or procedures on which Truist and the Compliance Consultant do not agree, Truist and the Compliance Consultant shall attempt in good faith to reach an agreement within sixty (60) days after the date of the Report. Within fifteen (15) days after the conclusion of the discussion and evaluation by Truist and the Compliance Consultant, Truist shall require that the Compliance Consultant inform Truist and the Commission staff in writing of the Compliance Consultant's final determination concerning any recommendation that Truist considers to be unduly burdensome, impractical, or inappropriate. Truist shall abide by the determinations of the Compliance Consultant and, within sixty (60) days after final agreement between Truist and the Compliance Consultant or final determination by the Compliance Consultant, whichever occurs first, Truist shall adopt and implement all of the recommendations that the Compliance Consultant deems appropriate.
- g. Truist shall cooperate fully with the Compliance Consultant and shall provide the Compliance Consultant with access to Truist's files, books, records, and personnel as are reasonably requested by the Compliance Consultant for review.
- h. Truist shall not have the authority to terminate the Compliance Consultant or substitute another compliance consultant for the initial Compliance Consultant, without the prior written approval of the Commission staff. Truist shall compensate the Compliance Consultant and persons engaged to assist the Compliance Consultant for services rendered under this Order at their reasonable and customary rates.
- i. For the period of engagement and for a period of two (2) years from completion of the engagement, Truist shall not (i) retain the Compliance Consultant for any other professional services outside of the services described in this Order; (ii) enter into any other professional relationship with the Compliance Consultant, including any employment, consultant, attorney-client, auditing or other professional relationship; or (iii) enter, without prior written consent of the Commission staff, into any such professional relationship with any of the Compliance Consultant's present or former affiliates, employers, directors, officers, employees, or agents acting in their capacity as such.
- j. The Report by the Compliance Consultant will likely include confidential financial, proprietary, competitive business or commercial information. Public disclosure of the Report could discourage cooperation, impede pending or potential government investigations or undermine the objectives of the reporting requirement. For these reasons, among others, the Report and the contents thereof are intended to remain and shall remain non-public, except (1) pursuant to court order, (2) as agreed to by the parties in writing, (3) to the extent that the Commission determines in its sole

discretion that disclosure would be in furtherance of the Commission's discharge of its duties and responsibilities, or (4) as otherwise required by law.

36. One-Year Evaluation. TSI, TIS, and TAS shall each require the Compliance Consultant to assess Truist's respective programs for the preservation, as required under the federal securities laws, of electronic communications, including those found on Personal Devices, commencing one year after submitting the report required by Paragraph 35.d above. Truist shall require this review to evaluate Truist's progress in the areas described in Paragraph 35.c.i-vii above. After this review, Truist shall require the Compliance Consultant to submit a report (the "One Year Report") to each of TSI, TIS, and TAS and the Commission staff and shall ensure that the One Year Report includes an updated assessment of Truist's respective policies and procedures with regard to the preservation of electronic communications (including those found on Personal Devices), training, surveillance programs, and technological solutions implemented in the prior year period.

37. Reporting Discipline Imposed. For two (2) years following the entry of this Order, Truist shall notify the Commission staff as follows upon the imposition of any discipline imposed by Truist, including, but not limited to, written warnings, loss of any pay, bonus, or incentive compensation, or the termination of employment, with respect to any employee found to have violated Truist's respective policies and procedures concerning the preservation of electronic communications, including those found on Personal Devices: at least forty-eight (48) hours before the filing of a Form U-5, or within ten (10) days of the imposition of other discipline.

38. Internal Audit. In addition to the Compliance Consultant's review and issuance of the One Year Report, TSI, TIS, and TAS will each also have their respective Internal Audit function(s) conduct separate audit(s) to assess Truist's respective progress in the areas described in Paragraph 35.c.i-vii above. After completion of this audit(s), Truist shall ensure that Internal Audit submits a report to each of TSI, TIS, and TAS and to the Commission staff.

39. Recordkeeping. TSI and TIS shall each preserve, for a period of not less than six (6) years from the end of the fiscal year last used, the first two (2) years in an easily accessible place, any record of compliance with these undertakings. TAS shall preserve any record of compliance with these undertakings in an easily accessible place for a period of not less than five (5) years from the end of the fiscal year during which the entry was made on such record, the first two (2) years in appropriate offices of TAS.

40. Deadlines. For good cause shown, the Commission staff may extend any of the procedural dates relating to the undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.

41. Certification. TSI, TIS, and TAS shall each certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further

evidence of compliance, and Respondents agree to provide such evidence. The certification and supporting material shall be submitted to Carolyn Welshhans, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC, 20549, or such other person as the Commission staff may request, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest to impose the sanctions agreed to in Respondents' Offer.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act as to TSI and TIS and Sections 203(e) and 203(k) of the Advisers Act as to TAS, it is hereby ORDERED that:

A. TSI and TIS cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Exchange Act and Rule 17a-4 thereunder.

B. TAS cease and desist from committing or causing any violations and any future violations of Section 204 of the Advisers Act and Rule 204-2 thereunder.

C. Respondents are censured.

D. Respondents shall comply with the undertakings enumerated in paragraphs 34 through 41 above.

E. Respondents, jointly and severally, shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$5,500,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

Payment must be made in one of the following ways:

- (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondents may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondents may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Truist Securities, Inc., Truist Investment Services, Inc., and Truist Advisory Services, Inc. as Respondents in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Carolyn Welshhans, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

F. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondents by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Vanessa A. Countryman
Secretary